number.[318] Other commenters supported retaining a revenue-based methodology for these services.[319] As discussed above, a revenue-based contribution methodology is no longer sustainable in today's telecommunications marketplace.[320] Additionally, a connections-based contribution methodology will provide a basis for assessing services not associated with telephone numbers, and will recognize the greater utility derived by business end users from these high capacity business service offerings.[321] Further, in contrast to the revenues on which contributions are currently based, the number and capacity of connections continues to grow over time, providing a contribution base that is more stable than the current revenue-based methodology. Moreover, a connections-based mechanism can be easily applied to all business services. We, therefore, conclude that a connections-based contribution mechanism is the better option for business services. We seek comment below on the implementation of the connections-based contribution mechanism for business services.[322]

132. We find that it is equitable and nondiscriminatory, consistent with the requirements of section 254(d) of the Act, to establish different contribution methodologies for residential and business services.[323] Although the statute states that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service," it does not require that all contributors or all services be assessed in the same manner.[324] Under the current revenue-based mechanism, the Commission has established different contribution methodologies through the use of proxies for wireless and interconnected VoIP services.[325] As noted above, continuing to use a revenues-based contribution methodology has become increasingly complex, and a numbers-based system would avoid many of those complexities.[326] At the same time, however, if we relied exclusively on a numbers-based contribution methodology, there are some business services—such as private line and special access—that would escape contribution requirements entirely. That result would be inconsistent with the obligation that all providers of interstate telecommunications services contribute to universal service, and would impose an unfair burden on providers that contribute on the

[318] *See Staff Study*; *see also* Ad Hoc Telecommunications Users Committee 2003 Staff Study Reply; Letter from John Nakahata, Counsel for the Coalition for Sustainable Universal Service, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Oct. 31, 2002).

[319] *See* Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 6 (filed Mar. 21, 2006) (Qwest Mar. 21, 2006 *Ex Parte* Letter); *see also* Qwest Sept. 24, 2008 *Ex Parte* Letter at 2.

[320] *See supra* para. 97.

[321] Time Warner *2006 Contribution FNPRM* Comments at 2.

[322] We decline at this time to adopt AT&T and Verizon's proposal for assessing contributions on connections based on flat rate charges that would differ based on the speed of the connection. AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter at 2. Instead, we seek further comment on implementing assessments based on connections.

[323] 47 U.S.C. § 254(d).

[324] 47 U.S.C. § 254(b)(4).

[325] The proxies offer an alternative to contributions assessed on actual interstate revenues; they are intended to approximate the portion of revenues derived from the provision of interstate telecommunications services. *First Wireless Safe Harbor Order*, 13 FCC Rcd at 21258–60, paras. 13–15 (establishing safe harbors for wireless service providers); *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 14954, para. 1 (modifying the wireless safe harbors); *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7532, 7545, paras. 23, 53 (revising the wireless safe harbor and establishing a safe harbor for interconnected VoIP providers).

[326] *See supra* para. 95.

basis of numbers.[327] We therefore conclude that adopting different contribution assessment methodologies for residential and business services will result in equitable and nondiscriminatory contribution obligations.

133. On an interim basis, while we conduct a proceeding to implement the connections-based contribution methodology, we continue to require providers to contribute to the universal service fund using the current revenue-based methodology for their business services.[328] We find that providers of business services should continue to bear their portion of the universal service contribution obligation to ensure the sufficiency of the fund while the connections-based contribution mechanism is being implemented.[329]

134. During the interim period in which the revenue-based contribution assessment for business services remains in place, the contribution factor for providers of business services will be determined based on the funding requirements not covered by the $1.00 assessment on Assessable Numbers. We will hold constant the contribution assessment on Assessable Numbers and determine the revenue contribution factor based on the quarterly projected demand of the universal service mechanisms divided by the quarterly projected-collected interstate and international end user telecommunications revenues from business services in the same manner in which the current contribution factor is calculated.[330] This approach will ensure a specific, predictable, and sufficient funding source for the Commission's universal service mechanisms.

4. Wireless Prepaid Plans

135. We adopt an alternative methodology for telephone numbers assigned to handsets under a wireless prepaid plan. Some commenters assess prepaid wireless services on a per-minute-of-use basis.[331] For example, prepaid wireless providers argue that their customers are typically low-income or low-

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[327] 47 U.S.C. §§ 254(b)(4), (d).

[328] Contributors will base their contributions on business service revenues in the same manner as they do currently. We make no change to the *de minimis* exemption or to the Limited International Revenue Exception (LIRE) for business contributions based on revenues. 47 U.S.C. § 254(d); 47 C.F.R. § 54.708; *Fifth Circuit Remand Order*, 15 FCC Rcd at 1687–88, para. 19; *Contribution First FNPRM*, 17 FCC Rcd at 3806–07, paras. 125–28. These exceptions do not apply to residential contributions based on numbers.

[329] *See* 47 U.S.C. § 254(d). Prepaid calling card providers, as well as any other current contributors who provide services to residential consumers but do not assign Assessable Numbers, shall continue to contribute based on their revenues during the interim period until these business services are assessed on the basis of connections and/or numbers. Despite IDT's recent request that its prepaid calling card services be treated as residential for purposes of universal service contribution assessments, we find that, consistent with arguments made over the years by such providers, these calling card services are provided to businesses. *See* Request for Review of Decision of the Universal Service Administrator by IDT Corporation and IDT Telecom, CC Docket No. 96-45 at 3 (filed June 30, 2008) ("The vast majority of [prepaid calling card sales] are completed through a network of distributors and resellers before being purchased by the ultimate end user consumer."). *But see* Letter from Tamar E. Finn, Counsel, IDT Corporation, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 06-122 (filed Oct. 28, 2008) (asking the Commission to treat prepaid calling cards as residential services if the Commission adopts a numbers-based methodology limited to residential numbers).

[330] The Commission may revise the specific per-number residential assessment amount in the future, if market conditions warrant.

[331] AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter, Attach. at 4.

volume consumers and, as such, should be subject to a lesser assessment.[332] Verizon and TracFone further assert that prepaid wireless providers may have difficulty administering a per-number assessment.[333] Verizon, therefore, recommends that any new contribution methodology accommodate prepaid wireless service providers by adopting a per-number assessment that "reflects the unique characteristics of [the] service," and TracFone similarly agrees.[334] Finally, CTIA essentially argues that the sheer number of prepaid wireless end users—over 44 million—combined with the likelihood that most of these end users would see a rise in their pass-through assessments warrants an exception.[335]

136. To accommodate the unique situation of prepaid wireless service providers, we find it appropriate to create a limited modification in contribution assessments for providers of prepaid wireless services and their end users.[336] We agree with commenters that it is considerably more difficult for wireless prepaid providers to pass-through their contribution assessments in light of their "pay-as-you-go" service offerings.[337] Because of this significant practical issue, we will modify the numbers-based assessment for prepaid wireless providers with regard to their offering of these services. Further, we note that, just as with Lifeline customers, many prepaid wireless end users are low income consumers. For example, TracFone states that about half of its customers have incomes of $25,000 or less.[338]

137. We find that TracFone's "USF by the Minute" proposal best addresses the concerns of prepaid wireless providers within the context of the new numbers-based contribution methodology we adopt today.[339] TracFone's proposed USF by the Minute Plan would calculate universal service

[332] Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 2 (filed Sept. 17, 2008) (TracFone Sept. 17, 2008 *Ex Parte* Letter); CTIA *2006 Contribution FNPRM* Comments at 6; Leap Wireless *2006 Contribution FNPRM* Comments at 2–3; T-Mobile Apr. 4, 2006 *Ex Parte* Letter at 3–4; Letter from John M. Beahn and Malcolm Tuesley, Counsel to Virgin Mobile USA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 4–7 (filed June 12, 2006) (Virgin Mobile June 12, 2006 *Ex Parte* Letter).

[333] *See, e.g.*, Verizon Mar. 28, 2006 *Ex Parte* Letter, Attach. at 3; TracFone Sept. 17, 2008 *Ex Parte* Letter, Attach. at 2; Virgin Mobile June 12, 2006 *Ex Parte* Letter, Attach. at 7.

[334] *See* Verizon Mar. 28, 2006 *Ex Parte* Letter, Attach. at 3; TracFone Sept. 17, 2008 *Ex Parte* Letter, Attach.; *see also* Letter from Antoinette Bush, Counsel for Virgin Mobile, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 11 (filed Mar. 18, 2005) (Virgin Mobile Mar. 18, 2005 *Ex Parte* Letter); AT&T and Verizon Sept. 23, 2008 *Ex Parte* Letter at 6.

[335] *See* CTIA Oct. 2, 2008 *Ex Parte* Letter at 1 (raising a concern that current proposals could harm the large number of prepaid wireless customers).

[336] As discussed below, Lifeline customers are exempt from contribution assessments. *See infra* para. 141.

[337] *See* Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 3 (filed June 15, 2007) (TracFone June 15 *Ex Parte* Letter).

[338] TracFone June 15, 2007 *Ex Parte* Letter at 3. TracFone also asserts that an exception is warranted because it provides service to low volume end users (i.e., end users that do make a small amount of calls, measured in minutes). *Id.* However, as explained below, we decline to provide a contribution exception for low-volume users. *See infra* para. 143.

[339] AT&T and Verizon support the TracFone discount approach for prepaid wireless providers. AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 3; *see also* Letter from David L. Sieradzki, Counsel to OnStar Corp., to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 2 (dated Oct. 28, 2008) (OnStar "strongly supports" the TracFone per-minute of use proposal for prepaid wireless services) (OnStar Oct. 28, 2008 *Ex Parte* Letter).

contribution assessments on prepaid wireless services by dividing the residential per-number assessment (the $1.00 flat fee adopted above) by the number of minutes used by the average postpaid wireless customer in a month. This per-minute number would then be multiplied by the number of monthly prepaid minutes generated by the provider. This amount would be the provider's monthly universal service contribution obligation. The per-minute assessment, however, would be capped at an amount equal to the current per month contribution per Assessable Number, the per-number assessment amount adopted above.[340] We illustrate the proposal below.

138. According to CTIA data submitted by TracFone, the average wireless postpaid customer used 826 minutes per month for the period ending December 2007.[341] The residential per-number assessment of $1.00 would be divided by 826 minutes to calculate a per-minute assessment of $0.001210654. The wireless prepaid provider's contribution obligation would be calculated by multiplying the per-minute assessment by the number of prepaid minutes generated for the month. If the wireless prepaid provider generated a billion prepaid minutes in a month, its contribution for that month would be $1,210,654.[342] If the prepaid provider had 10 million prepaid customers that month, the average contribution per customer would be $0.12 and its contribution obligation would remain at $1,210,654. If, on the other hand, it had only 1 million customers, the average contribution per-customer would be $1.20, which exceeds the residential per-number assessment of $1.00. In this case, because the per-customer contribution amount under the calculation would exceed the residential per-number assessment established by the Commission, the prepaid provider's contribution obligation would be capped at $1,000,000, which is the residential per-number assessment of $1.00 multiplied by the 1 million monthly prepaid customers. Under this scenario, the average per-customer contribution for the prepaid wireless provider would be equal to the per-number contribution of $1.00 for non-prepaid residential numbers.

139. We find the TracFone discount approach superior to other forms of a discount proposed by parties. For example, CTIA proposed a fifty percent discount for prepaid wireless providers.[343] The TracFone approach is based on actual wireless calling data, whereas the CTIA approach represents a more arbitrary half-off discount. Moreover, the CTIA proposal makes no allowance for the type of end user that is using the prepaid wireless service. This contrasts with the TracFone proposal, which would not provide any discount to those end users that use more than the average monthly post-paid number of minutes. As explained above, for those customers whose usage would result in more than the $1.00 pass-through, the assessment on the provider and the pass-through would be capped at $1.00 per month per Assessable Number. Thus, high volume users would neither benefit from, nor be penalized by, the discount mechanism. Finally, we make clear that if the prepaid provider is an ETC and is providing service to qualifying Lifeline customers, the provider is exempt from contribution assessments on the qualifying Lifeline customers and we prohibit the provider from assessing any universal service pass-through charges on their Lifeline customers.

5. Exceptions to Contribution Obligations

140. A number of parties have asked for exceptions from the contribution obligation. We find that, in general, providing an exception or exemption to a particular provider or to a particular category of

[340] TracFone Sept. 17, 2008 *Ex Parte* Letter, Attach. at 4–5.

[341] *See* TracFone Sept. 17, 2008 *Ex Parte* Letter at 5. We use these data because they are the most recent publicly available data.

[342] To the extent that the prepaid wireless subscriber is a Lifeline customer for the prepaid service, the prepaid provider should exclude prepaid minutes associated with the qualifying Lifeline customer. *See infra* para. 141.

[343] CTIA Oct. 2, 2008 *Ex Parte* Letter at 5.

end users would complicate the administration of the numbers-based methodology we adopt today. The result would unfairly favor certain groups by reducing or eliminating their contribution obligations, while increasing the contribution obligations on providers that are not exempted from contributing. Therefore, we conclude that grant of an exemption from the contribution obligations is only warranted for those who are truly unable to bear the burden of contributing to the universal service fund—low-income consumers. As discussed below, we exempt providers from contribution assessments on their qualifying Lifeline program customers and prohibit contributors from assessing any universal service pass-through charges on their Lifeline customers. Similarly, we exempt providers of stand-alone voice mail services, which are provided to low-income "phoneless" people, from contribution obligations. As explained below, an exception for low-income consumers is consistent with the Commission's policies underlying the low-income universal service program and targets universal service benefits to those consumers most in need of those benefits.[344]

141. We conclude that telephone numbers assigned to Lifeline customers should be excluded from the universal service contribution base and providers of Lifeline service may not pass-through contribution assessments to Lifeline customers.[345] The Lifeline program provides an opportunity for the Commission to ensure that low-income families are not denied access to telephone service. We find that an exception for Lifeline customers satisfies the high threshold necessary to justify an exception to the new numbers-based contribution methodology we adopt today. Lifeline customers are, by definition, among the poorest individuals in the country. As such, they are in the greatest need of relief from regulatory assessments. Prohibiting recovery of universal service contributions from Lifeline customers helps to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charges.[346] The record, moreover, overwhelmingly supports the creation of an exception for Lifeline customers. Consumer groups, large telecommunications customers, LECs, and wireless providers all support creating an exemption for Lifeline customers, and no commenter opposes an exemption for Lifeline customers.[347] We therefore adopt an exemption to our numbers-based contribution methodology for Lifeline customers.

142. Similarly, we find that stand-alone voice mail service providers are exempt from direct contribution obligations of the new methodology we adopt today. Community Voice Mail National (CVM) argues that stand-alone voice mail services consist of free voice mail access to "phoneless" people.[348] As in the exemption for Lifeline customers, we find that stand-alone voice mail service of the type provided by CVM benefits low-income consumers who are most in need of access to such services. We therefore exempt providers of this type of stand-alone voice mail service from universal service contribution assessments on numbers associated with stand-alone voice mail services; and we prohibit providers of these services from assessing any universal service contribution pass-through charges on

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[344] *Alenco v. FCC*, 201 F.3d at 621.

[345] *See, e.g.*, AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter at 4 (proposing that numbers assigned to Lifeline customers be excluded from the monthly number count for contribution purposes).

[346] *See Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24982, para. 62.

[347] *See, e.g.*, CTIA *2006 Contribution FNPRM* Comments at 5; CU et al. *High-Cost Reform NPRMs* Reply at 58; Ad Hoc Nov. 19, 2007 *Ex Parte* Letter at 4; AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 5.

[348] Letter from Jennifer D. Brandon, Executive Director, Community Voice Mail National, to Tom Navin, Wireline Competition Bureau, FCC, CC Docket No. 96-45 at 1 (filed May 30, 2006) (Community Voice Mail May 30, 2006 *Ex Parte* Letter) (CVM provides "free, personalized voicemail access to people in crisis and transition (homeless, victims of domestic violence, and other 'phoneless' people")).

customers of these services.[349]

143. Although commenters have sought contribution exceptions for other groups of consumers or service providers, we decline to adopt any further exceptions.[350] Some parties argue that consumers who make few or no calls, i.e., low-volume users, should be exempt from the numbers-based residential contribution assessment mechanism.[351] As discussed above, all users of the network, even those who make few or no calls, receive a benefit by being able to receive calls, and therefore it is appropriate for these consumers to contribute to universal service.[352] Also as discussed above, to the extent low-volume consumers may see an increase in the amount of their universal service contribution pass-through fee,[353] any such increase should be slight.[354]

144. We also decline to exempt telematics providers,[355] one-way service providers,[356] and two-way paging services[357] from contributing based on numbers. We disagree with commenters arguing for special treatment for these services.[358] Granting exceptions for these services would provide them with an

[349] We decline to adopt a reimbursement method, in which contributors would pay the full amount of their contribution assessments and then seek refunds from USAC for any exempted numbers, as recommended by AT&T and Verizon. AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter at 4. We find that adopting such a reimbursement requirements would create a significant administrative burden on contributors that would outweigh any potential benefits. Letter from Matthew A. Brill, Counsel for USA Mobility, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 06-122 at 2 (filed Oct. 24, 2008).

[350] We do not prejudge whether additional exceptions should apply if the Commission were to assess contributions based on numbers for business services. We note that certain businesses, such as non-profit health care providers, libraries, and colleges and universities, support such exemptions. We do not address those exemptions at this time.

[351] *See, e.g.*, CU et al. *Contribution First FNPRM* Comments at 12; NASUCA *Contribution First FNPRM* Comments at 14; Keep USF Fair Mar. 27, 2006 *Ex Parte* Letter, Attach. at 1.

[352] *See supra* para. 113; *see also* Sprint *Contribution First FNPRM* Comments at 7.

[353] *But see* IDT Aug. 2, 2007 *Ex Parte* Letter at 6–7 (arguing that low-volume consumers who make no long distance calls pay about $1.40 in universal service contribution assessments).

[354] *See supra* para. 112.

[355] Telematics is a service that is provided through a transceiver, which is usually built into a vehicle but can also be a handheld device, that provides public safety information to public safety answering points (PSAPs) using global positioning satellite data to provide location information regarding accidents, airbag deployments, and other emergencies in real time. *See, e.g.*, Letter from David L Sieradzki, Counsel for OnStar, to Marlene H. Dortch, FCC, CC Docket No. 96-45, Attach. at 1 (filed Mar. 2, 2006); *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Systems*, CC Docket No. 94-102, Order, 18 FCC Rcd 21531, 21531–33, paras. 2, 8 (2003).

[356] One-way services include, but are not limited to, one-way paging, electronic facsimile (e-fax), and voicemail services (other than stand-alone voicemail services, as discussed above).

[357] *See, e.g.*, Letter from Matthew Brill, Counsel for USA Mobility, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 2 (filed Oct. 24, 2008) (opposing the assessment of a numbers-based fee on paging carriers and their customers); Letter from Kenneth Hardman, representing the American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at Attach. (filed Oct. 22, 2008).

[358] *See* Letter from Ari Q. Fitzgerald, Counsel, Mercedes-Benz USA, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Apr. 12, 2006) (Mercedes-Benz Apr. 12, 2006 *Ex Parte* Letter); *see also* Letter from John E. Logan, ATX Group, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2 (filed

(continued....)

advantage over other services that are required to contribute based on residential telephone numbers. These services are receiving the benefit of accessing the public network and therefore assessing universal service contributions on these entities is appropriate.[359] These service providers have not shown that grant of a contribution exception is warranted.[360] Accordingly, providers of these services will be assessed the full per-number charge. Some one-way service providers argue that their services are currently offered on a free, or nearly-free basis, and if these services are assessed on a per telephone number basis, providers will no longer be able to offer them.[361] We disagree that our change in contribution policy necessitates this result. Although these services may be marketed as "free" to the end user, these services are not truly free. Commercial providers of free or nearly-free services generate revenue in other ways, such as advertising or through more sophisticated paid service offerings or product offerings, and, therefore, whether they continue to offer free services would be a business decision based upon the circumstances of the particular business.[362] Indeed, we find that assessing a per-number contribution obligation on these services is consistent with our determination that services that benefit from a ubiquitous public network are fairly charged with supporting the network.

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Mar. 16, 2006) (ATX Mar. 16, 2006 *Ex Parte* Letter); Letter from David M. Don, Counsel for j2 Global Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Nov. 18, 2005) (j2 Global Nov. 18, 2005 *Ex Parte* Letter); Letter from William B. Wilhelm, Jr., Counsel for Bonfire Holdings, to Tom Navin, Chief, Wireline Competition Bureau, CC Docket No. 96-45 (filed Feb. 13, 2006) (Bonfire Feb. 13, 2006 *Ex Parte* Letter); j2 Global *Contribution Second FNPRM* Comments at 2; Letter from Kenneth E. Hardman, Counsel for American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1 (filed Oct. 6, 2005) (AAPC Oct. 6, 2005 *Ex Parte* Letter); Letter from Frederick M. Joyce, Counsel for USA Mobility, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1–3 (filed Mar. 22, 2006) (USA Mobility Mar. 22, 2006 *Ex Parte* Letter).

[359] We similarly decline to adopt an exemption from the numbers-based contribution assessment method for services provided by alarm companies. *See* Letter from Donald J. Evans, Counsel for Corr Wireless Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 06-122, WT Docket No. 05-194, at 2 (filed Oct. 23, 2008). These services are receiving the benefit of having access to the PSTN and should therefore contribute to universal service.

[360] Telematics providers argue against imposition of a $1.00 per number per month contribution assessment on telematics numbers due to the service's critical role in advancing public safety, and because the $1.00 assessment would be prohibitively expensive. *See, e.g.*, Letter from Gary Wallace, Vice President Corporate Relations, ATX Group, Inc., to Kevin Martin, Chairman, FCC, CC Docket No. 96-45, WC Docket No. 06-122 at 1–2 (filed Oct. 28, 2008); OnStar Oct. 28, 2008 *Ex Parte* Letter at 3–4; Letter from Matthew Brill, Counsel for Toyota Motor Sales USA, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 at 1–2 (filed Oct. 24, 2008). We find, however, that treating these services differently than other residential services would not be equitable, given their use of the PSTN and the ability of telematics providers to recover the assessment from their end users. Given the public safety benefit to consumers, we find unpersuasive the telematics' providers assertions that consumers will discontinue use of the service based on an assessment of only $1.00 per number. Furthermore, we disagree with commenters who argue that telematics service should be treated as a business service, and conclude that telematics service is a residential service that should be assessed under the $1.00 per number per month residential contribution methodology. *See* OnStar Oct. 28, 2008 *Ex Parte* Letter at 2; Letter from Tamara Preiss, Legal and External Affairs, Verizon Wireless, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 at 1 (filed Oct. 29, 2008).

[361] *See, e.g.*, j2 Global *Contribution Second FNPRM* Comments at 7 (arguing that a connections-based universal service methodology would force many heavily used one-way communications services out of existence).

[362] *See, e.g.*, j2 Global *Contribution Second FNPRM* Comments at 8 (describing a "free" service supported by advertising revenue).

145. We also decline to adopt an exception from the residential numbers-based contribution mechanism for additional handsets provided through a wireless family plan. We do not agree with commenters who argue that telephone numbers assigned to the additional handsets in family wireless plans should be assessed at a reduced rate, either permanently or for a transitional period.[363] These commenters assert that assessing contributions at the full per-number rate would cause family plan customers to experience "rate shock."[364] Although family plan customers may see an increase in universal service contribution pass-through charges on their monthly bills, we are not persuaded that the fear of "rate shock" justifies special treatment. We find that each number associated with a family plan obtains the full benefits of accessing the public network, and thus it is fair to assess each number with a separate contribution obligation. We also note that wireless service is one of the fastest-growing sectors of the industry and the record does not include persuasive data showing that a move to a numbers-based contribution methodology would have a significant, detrimental impact on wireless subscribership.[365] We agree with Qwest that an exception for additional family plan handsets would not be competitively neutral and would advantage approximately 70 million wireless family plan consumers over other residential service consumers.[366] Multiple wireline lines in a household are not given a discounted contribution assessment rate. We therefore decline to adopt a reduced assessment for wireless family plan numbers.

146. Some parties seek an exception to the contribution methodology we adopt today to exclude Internet-based telecommunications relay services (TRS), including video relay services (VRS) and IP Relay services.[367] We decline to adopt an exception for such providers at this time. The Commission has an open proceeding on a number of issues related to these providers, including whether certain costs to these providers related to the acquisition of ten-digit numbers by their customers should be reimbursed by the TRS fund.[368] We defer to that proceeding consideration of whether to adopt an exception to the contribution methodology we adopt today for numbers assigned to Internet-based TRS

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[363] *See, e.g.*, AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter at 4; CTIA *2006 Contribution FNPRM* Comments at 5–6; Leap Wireless *2006 Contribution FNPRM* Comments at 2–3; T-Mobile Apr. 4, 2006 *Ex Parte* Letter at 2.

[364] *E.g.*, AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 4; CTIA *2006 Contribution FNPRM* Comments at 5–6; Leap Wireless *2006 Contribution FNPRM* Comments at 2–3; T-Mobile Apr. 4, 2006 *Ex Parte* Letter at 2–3. *But see* AAPC Oct. 9, 2008 *Ex Parte* Letter at 2.

[365] There are, as of December 2007, 249,235,715 mobile wireless subscribers, a more than 9% increase from the previous year. *See* FCC, LOCAL TELEPHONE COMPETITION: STATUS AS OF DECEMBER 31, 2007, tbl. 14 at 18 (2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf. Moreover, where a wireless provider is eligible to receive universal service support, it receives the same level of support for each handset. *See* WTA/OPASTCO/ITTA Oct. 10, 2008 *Ex Parte* Letter at 2.

[366] Qwest Sept. 24, 2008 *Ex Parte* Letter, Attach. at 7; Qwest May 4, 2006 *Ex Parte* Letter, Attach. at 9; *see also* CTIA Oct. 2, 2008 *Ex Parte* Letter at 1.

[367] *See* Letter from Deb MacLean, Communication Access Center for the Deaf and Hard of Hearing, et al. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 1–2 (filed Sept. 29, 2008) (CSDVRS Sept. 29, 2008 *Ex Parte* Letter).

[368] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11646, para. 149 (2008) ("We . . . seek comment on whether, and to what extent, the costs of acquiring numbers, including porting fees, should be passed on to the Internet-based TRS users, and not paid for by the [TRS] Fund. . . . We also seek comment on whether there are other specific costs that result from the requirements adopted in the *Order* that, mirroring voice telephone consumers, should be passed on to consumers, including, for example, E911 charges.").

users.[369]

6. Reporting Requirements and Recordkeeping

147. Under the existing revenue-based contribution methodology, contributors report their historical gross-billed, projected gross-billed, and projected collected end-user interstate and international revenues quarterly on the FCC Form 499-Q and their gross-billed and actual collected end-user interstate and international revenues annually on the FCC Form 499-A.[370] Contributors are billed for their universal service contribution obligations on a monthly basis based on their quarterly projected collected revenue.[371] Actual revenues reported on the FCC Form 499-A are used to perform true-ups to the quarterly projected revenue data.[372]

148. We will develop a new and unified reporting system to accommodate our new universal service contribution methodology.[373] Contributors will report their Assessable Number counts on a monthly basis. Contributors must report as an Assessable Number any such number that is in use by an end user during any point in the relevant month. The Commission will develop an additional version of the FCC Form 499 for use in reporting Assessable Numbers. Under the interim business revenue-based reporting component, contributors will report their revenue information on the modified FCC Forms 499-A and 499-Q.

149. Under the new numbers-based system we adopt today, contributors will report historical Assessable Numbers monthly. Contributors will then be invoiced and required to contribute the following month. By reporting actual, historical numbers, the numbers-based component of our contribution methodology remains simple and straightforward. As explained above, a key reason to move to a primarily numbers-based approach is its simplicity. Indeed, several commenters propose monthly reporting of historical number counts.[374] We find that reporting Assessable Numbers on a projected

[369] To the extent that Internet-based TRS users utilize a proxy number or identifier other than an assigned ten-digit number during/pending the transition to ten-digit numbering for Internet-based TRS services, we make clear that those numbers or identifiers are NOT subject to universal service contribution at this time. This treatment is necessary to ensure the smooth transition to ten-digit numbering for these services, and to prevent duplicative charges for end users of these services.

[370] *See, e.g.*, *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24969, para. 29. Filers are required to file revisions to FCC Form 499-Q within 45 calendar days of the original filing date. *See* FCC, INSTRUCTIONS TO THE TELECOMMUNICATIONS REPORTING WORKSHEET, FCC Form 499-Q, at 10 (Feb. 2008), *available at* http://www.fcc.gov/Forms/Form499-Q/499q.pdf. Filers are required to file revisions to FCC Form 499-A by March 31 of the year after the original filing date. *See* FCC, INSTRUCTIONS TO THE TELECOMMUNICATIONS REPORTING WORKSHEET, FCC Form 499-A, at 11–12 (Feb. 2008), *available at* http://www.fcc.gov/Forms/Form499-A/499a-2008.pdf.

[371] *See Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24972, para. 35.

[372] *See Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24972, para. 36.

[373] We decline to adopt the suggestion by AT&T and Verizon to transition the Telecommunications Relay Services Fund, local number portability cost recovery, and numbering administration to a numbers/connections-based assessment methodology. *See* AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter at 6. Although these programs rely on the revenue information reported in the current FCC Form 499-A, they do not rely on many of the revenue distinctions, such as interstate and intrastate, that necessitate the change from a revenue-based assessment for the universal service fund.

[374] *See* AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 2-3; CTIA Oct. 2, 2008 *Ex Parte* Letter, Attach. at 5; USF by the Numbers Oct. 3, 2008 *Ex Parte* Letter.

collected basis would unnecessarily complicate the numbers-reporting system. Although we are mindful of the issues inherent in historical reporting,[375] we find that a one month lag between the reported Assessable Numbers and the contribution based on those numbers is minimal and will not unfairly disadvantage any provider, even those with a declining base.

150. We allow contributors to self-certify which telephone numbers are, consistent with this order, considered "residential." Contributors will be subject to audit, however, and their method for distinguishing residential from other numbers must be reasonable and supportable. For example, in the Commission's *Broadband Data Gathering Order* released earlier this year, the Commission directed mobile wireless service providers "to report as residential subscriptions those subscriptions that are not billed to a corporate account, to a non-corporate business customer account, or to a government or institutional account."[376] We added that "[f]or purposes of Form 477, subscriptions billed to a federal government department or agency, for example, will not be 'residential' subscriptions, while subscriptions to a service plan offered to all federal government employees will be considered to be residential subscriptions."[377] For purposes of identifying numbers associated with business services (which are not Assessable Numbers), contributors may rely on the fact that the line associated with that number is assessed a *multi-line* end user common line charge (i.e., SLC); provided, however, that the SLC must be a mandatory charge, rather than a discretionary charge.[378] For determining residential numbers (which are Assessable Numbers), however, a contributor may not rely on the assessment of a residential SLC, because SLC rates are the same for residential and single-line business end users. Therefore, the fact that a contributor charges the single-line business/residential SLC may not accurately indicate whether the service provided is a business or residential service.[379]

151. Each contributor must maintain the necessary internal records to justify, in response to an audit or otherwise, its reported Assessable Number counts and the data reported on the Commission's contribution forms.[380] Contributors are responsible for accurately including all Assessable Numbers associated with residential services in their Assessable Number counts and revenues from all business services in the interim business services revenue component of the methodology. Failure to file the required form by the applicable deadline, or failure to file accurate information on the form, could subject a contributor to enforcement action.[381] In addition, as with the current FCC Forms 499-A and 499-Q, we will require that an officer of the filer certify to the truthfulness and accuracy of the forms submitted to the administrator.

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[375] *See Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24969–70, paras. 29–32.

[376] *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, 23 FCC Rcd 9691, 9704, para. 24 (2008) (*Broadband Data Gathering Order*), Order on Reconsideration, 23 FCC Rcd 9800 (2008).

[377] *Broadband Data Gathering Order* at para. 24 n.91.

[378] In other words, the SLC type and rate must be established pursuant to the Commission's rules. 47 C.F.R. §§ 69.104(o)(1), 69.152(k)(1). To the extent that the contributor is not required to charge a SLC (e.g., is not rate-regulated by the Commission), a voluntary business choice to include a "subscriber line charge" on a customer's bill may not be dispositive of the type of service, residential or business, being provided.

[379] 47 C.F.R. §§ 69.104(n)(1), 69.152(d)(1).

[380] *Comprehensive Review Report and Order*, 22 FCC Rcd at 16387, para. 27.

[381] Pursuant to section 1.80 of the Commission's rules, failure to file required forms or information carries a base forfeiture amount of $3,000 per instance and is subject to adjustment criteria. *See* 47 C.F.R. § 1.80.

152. To ensure that filers report correct information, we continue to require all reporting entities to maintain records and documentation to justify the information reported in these forms, and to provide such records and documentation to the Commission and to USAC upon request.[382] All universal service fund contributors are required to retain their records for five years.[383] Specifically, contributors to the universal service fund must retain all documents and records that they may require to demonstrate to auditors that their contributions were made in compliance with the program rules, assuming that the audits are conducted within five years of such contribution. Contributors further must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Office of Inspector General, to USAC, and to their respective auditors. These documents and records should include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation.[384]

153. Further, we make clear that for purposes of the interim business revenue component, we retain all existing reporting requirements associated with the filing of the FCC Forms 499-A and 499-Q for business service revenue. Finally, we direct the Bureau, and delegate to the Bureau the authority, to develop or modify the necessary forms to ensure proper contribution reporting occurs, consistent with this order.

7. Transition to New Methodology

154. The new reporting procedures discussed above will require reporting entities to adjust their record-keeping and reporting systems in order to provide reports to USAC regarding the number of Assessable Numbers and to adjust their revenue information to include only business service revenue. Accordingly, we implement a 12-month transition period for the new contribution mechanisms.[385] This transition period will give contributors ample time to adjust their record-keeping and reporting systems so that they may comply with modified reporting procedures. As explained below, a 12-month transition period will also allow reporting entities to submit several reports for informational purposes before being assessed on the basis of projected Assessable Numbers for residential services.[386] We find, therefore, that a 12-month transition period balances administrative burdens on contributors with the need to implement the new contribution methodologies in a balanced and equitable manner.

155. During 2009, filers will continue reporting their interstate telecommunications revenue

[382] *Comprehensive Review Report and Order*, 22 FCC Rcd at 16372, para. 27; *see also* 47 C.F.R. §§ 54.706(e), 54.711(a).

[383] *See Comprehensive Review Report and Order*, 22 FCC Rcd at 16372, para. 27; 47 C.F.R. § 54.706(e).

[384] *See Comprehensive Review Report and Order*, 22 FCC Rcd at 16387, paras. 27–28. We note that contributors who also report NRUF data to the NANPA are currently required to maintain internal records of their numbering resources for audit purposes. *NRO I Order*, 15 FCC Rcd at 7601, para. 62.

[385] *See* AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter, Attach. at 3 (proposing a 12-month transition to the new mechanism taking effect).

[386] *See* CTIA *2006 Contribution FNPRM* Comments at 7; *see also* Verizon and AT&T Sept. 11, 2008 *Ex Parte* Letter, Attach. at 2 (advocating a 12-month implementation period followed by a 6-month transition period). Some parties advocated for a transition period as short as possible. *See, e.g.*, Letter from Gregory J. Vogt, Counsel for CenturyTel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337, Attach. at 2 (filed Sept. 19 2008) (CenturyTel Sept. 19, 2008 *Ex Parte* Letter); Sprint Nextel June 14, 2006 *Ex Parte* Letter. Others advocated for a longer transition period. *See, e.g.*, Qwest Mar. 21, 2006 *Ex Parte* Letter, Attach. at 3 (advocating 18 months); XO Communications Oct. 3, 2008 *Ex Parte* Letter, Attach. at 11 (advocating at least 18 months).

on a quarterly basis and USAC will continue assessing contributions to the federal universal service mechanisms based on those quarterly reports. This one-year period and, in particular, the first six months of that period, should be used by contributors to adjust their internal and reporting systems to prepare for the reporting of Assessable Numbers and business revenues.

156. Beginning in July 2009, contributors will continue to report and contribute based on their quarterly reported interstate and international revenues for the last two quarters of the year, but they will also begin filing with USAC monthly reports of their Assessable Numbers and quarterly reports of their business revenues. USAC will thus collect data under the old revenue-based methodology, while collecting and reviewing data under the new Assessable Number and business revenues methodologies for the last six months of 2009. We find that this six-month period of double-reporting is necessary to help reporting entities, Commission staff, and USAC identify implementation issues that may arise under this new methodology prior to it taking effect.[387] Although only the December 2009 Assessable Numbers and the fourth quarter 2009 business revenue data will be used to compute contributors' January 2010 and first quarter 2010 assessments, we find it is reasonable to require contributors to begin filing under the new methodologies prior to these periods to ensure that there is adequate time for all affected parties to address any implementation issues that may arise. Moreover, we conclude that the short overlap of reporting under both the old and new methodologies will not be unduly burdensome for contributors given the limited duration of the dual reporting.

V. REFORM OF INTERCARRIER COMPENSATION

157. Since Congress first passed the Communications Act in 1934, the Commission has sought "to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."[388] To promote universal service, regulators have long relied on a complex array of intercarrier compensation mechanisms, which generally have included implicit subsidies. Through the years, the introduction of competition into first long-distance and then local markets, as well as the development and deployment of new technologies, have eroded the fundamental economic underpinnings of the current intercarrier compensation regimes. The reforms we adopt in this order are designed to unify and simplify the myriad intercarrier compensation systems in existence today. This unification and simplification will encourage the efficient use of, and investment in, advanced telecommunications and broadband networks, spur intermodal competition throughout the United States, and minimize the need for future regulatory intervention.

158. Today, we adopt a new approach to intercarrier compensation and establish the blueprint for moving to new uniform termination rates that are economically efficient and sustainable in our increasingly competitive telecommunications markets. At the same time, we recognize, as the Commission has in the past, that we need to be cognizant of market disruptions and potential adverse effects on consumers and carriers of moving too quickly from the existing intercarrier compensation regimes to our new uniform approach to intercarrier compensation. Accordingly, we adopt here a gradual ten-year transition plan, with separate stages, designed to reduce rates over a sufficient period to minimize market disruptions and to cushion the impact of our reform on both customers and carriers. At the end of the transition period, all telecommunications traffic will be treated as falling within the reciprocal compensation provisions of section 251(b)(5), and states will set default reciprocal compensation rates pursuant to the new methodology we adopt herein.

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[387] *See* AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter, Attach. at 3 (recommending a six-month transition period for filers and USAC to test and calibrate the new system prior to its taking effect).

[388] 47 U.S.C. § 151.

A. A Brief History of Intercarrier Compensation

159. This section provides an overview of the development of intercarrier compensation regulation in the United States. Although not comprehensive, it highlights several important goals that have emerged in Commission precedent, which are relevant to intercarrier compensation reform.

- *Promoting universal service.* The Commission has sought to promote universal service, and, in furtherance of that objective, an intricate web of implicit subsidies evolved that were intended to keep the price of residential local telephone service affordable, even if that price was below cost. With the introduction of competition for long-distance telephone service, regulators sought to maintain implicit subsidies of local service when they created regulated intercarrier compensation charges, known as "access charges," that long-distance service providers paid local telephone companies to originate and terminate long-distance calls.

- *Encouraging efficient use of the network.* The Commission has long recognized that requiring end-users to bear a greater proportion of the cost of the local network encourages them to make rational choices in their use of telephone service. The Commission nevertheless has declined to shift a significant percentage of the cost of the network to those end users in light of universal service concerns.

- *Realigning cost recovery in response to competition.* For much of the twentieth century, telephone service was viewed as a natural monopoly. The emergence of competition for long-distance services in the 1970s and for local services, particularly after the 1996 Act, has placed pressure on above-cost intercarrier compensation charges. Although the Commission, in response to competitive entry, sought to develop intercarrier compensation rules that align more closely with the economic principle that costs should be recovered in the way they are incurred, marketplace developments confirm that those efforts were incomplete. As new competitors entered, a series of regulatory arbitrage strategies developed, some of which the Commission has attempted to address on a case-by-case basis.

- *Technological advancements.* As carriers shift from circuit-switched telephone-only networks to packet-switched broadband networks supporting numerous services and applications, it is important that intercarrier compensation rules create the proper incentives for carriers to invest in new broadband technology and that consumers have the opportunity to take full advantage of the new capabilities of this broadband world.

1. Intercarrier Compensation Regulation Before the Telecommunications Act of 1996

160. When AT&T began offering telephone service in 1877,[389] it held all the essential patents and effectively operated as a legal monopoly. When the original patents expired in 1894, however, thousands of independent telephone companies began offering competing local telephone service.[390] This

[389] The company that became AT&T was originally called the Bell Telephone Company. *See* AT&T, A Brief History: Origins, http://www.corp.att.com/history/history1.html (last visited Sept. 11, 2008) (AT&T Brief History). For simplicity, we use the term "AT&T" to include all predecessor companies.

[390] Between 1894 and 1904, "over six thousand independent telephone companies went into business in the United States, and the number of telephones boomed from 285,000 to 3,317,000." *See* AT&T Brief History. By 1900, independent telephone companies controlled "38 percent of the phones installed in the United States." GERALD W. BROCK, THE TELECOMMUNICATIONS INDUSTRY, THE DYNAMICS OF MARKET STRUCTURE 148 (1981) (THE TELECOMMUNICATIONS INDUSTRY). And, by 1902, 451 out of 1002 cities with telephone service had two or more

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new competition led to lower rates,[391] and reduced AT&T's average return on investments by over 80 percent.[392] AT&T responded by refusing to interconnect with any independent telephone company to exchange long-distance or local traffic.[393] Without interconnection, independent telephone companies could not offer a viable service unless such entities duplicated the AT&T system, which was not economically feasible. As a result, independent telephone companies began to go out of business or were acquired by AT&T.[394]

161. AT&T's predatory strategy led the Department of Justice to file an antitrust suit against AT&T in 1913. The government alleged that AT&T's interconnection and acquisition policies violated Section 2 of the Sherman Act.[395] The case was eventually dropped after AT&T committed to abide by certain principles in what became known as the Kingsbury Commitment of 1913. Under the Kingsbury Commitment, AT&T agreed to: (i) allow independent telephone companies to interconnect with AT&T's long-distance network; and (ii) not acquire any additional independent telephone companies absent regulatory approval.[396] In exchange, the government sanctioned AT&T's monopoly control over markets where it already offered service.

162. In essence, the Kingsbury Commitment and subsequent regulation assumed that both the local and long-distance telephone businesses were natural monopolies.[397] Policymakers embraced the

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competing providers. *See* MICHAEL K. KELLOGG ET AL. FEDERAL TELECOMMUNICATIONS LAW 11 (1992) (FEDERAL TELECOMMUNICATIONS LAW).

391 THE TELECOMMUNICATIONS INDUSTRY at 116.

392 FEDERAL TELECOMMUNICATIONS LAW at 11; *see also* Adam D. Thierer, *Unnatural Monopoly: Critical Moments In The Development Of The Bell System Monopoly*, 14 CATO J. 2 (1994), *available at* http://www.cato.org/pubs/journal/cjv14n2-6.html (*Unnatural Monopoly*). Although independent companies competed with AT&T for local service, AT&T had the only long-distance network operating at the time and possessed important long-distance technology patents. *See* THE TELECOMMUNICATIONS INDUSTRY at 148. According to Brock, there is some evidence that the independent companies had planned on starting a separate long-distance network until AT&T refused interconnection. GERALD W. BROCK, THE SECOND INFORMATION REVOLUTION 30–32 (2003) (SECOND INFORMATION REVOLUTION).

393 FEDERAL TELECOMMUNICATIONS LAW at 11–12; THE TELECOMMUNICATIONS INDUSTRY at 148; David F. Weiman & Richard C. Levin, *Preying for Monopoly? The Case of Southern Bell Telephone Company, 1894–1912*, 102 J. POL. ECON. 103, 103–26 (1994).

394 FEDERAL TELECOMMUNICATIONS LAW at 11. In 1912 alone, AT&T purchased 136,000 telephone companies and sold 43,000. *See* THE TELECOMMUNICATIONS INDUSTRY at 156.

395 Original Petition, *United States v. AT&T*, No. 6082 (D. Or. 1913); *United States v. AT&T*, No. 6082, 1 DECREES AND JUDGMENT IN CIVIL ACTION CASES 483 (D. Or. 1914); *see also* PETER TEMIN, THE FALL OF THE BELL SYSTEM: A STUDY IN PRICES AND POLITICS 9–10 (1987); ROBERT W. GARNET, THE TELEPHONE ENTERPRISE: THE EVOLUTION OF THE BELL SYSTEM'S HORIZONTAL STRUCTURE, 1876–1909 152–53 (1985).

396 The Kingsbury Commitment was a "unilateral letter rather than an actual consent decree." *See* THE TELECOMMUNICATIONS INDUSTRY at 155. The Kingsbury Commitment was republished in AT&T's 1913 Annual Report at 24–26, *available at* http://www.porticus.org/bell/pdf/1913ATTar_Complete.pdf. AT&T also agreed to sell off its Western Union stock, a large independent telephone company that AT&T had recently acquired. *See id.* at 24. *See* FEDERAL TELECOMMUNICATIONS LAW at 11–12; *see also Unnatural Monopoly*.

397 *See*, *e g.*, *Unnatural Monopoly* (noting that a Senate Commerce Committee hearing in 1921 stating that "telephoning is a natural monopoly" and a House of Representative committee report stated that "[t]here is nothing to be gained by local competition in the telephone business.") (quoting G. H. Loeb, *The Communications Act Policy Toward Competition: A Failure to Communicate*, 1 DUKE LAW J. 14 (1978)); *see also id.* (explaining that many state regulatory agencies began refusing requests by telephone companies to construct new lines in areas already served

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view that, because of economies of scale, a natural monopoly could provide service more efficiently than would occur in a competitive market.[398] Rates for these natural monopolies were subject to rate-of-return regulation.[399] In setting regulated rates, a primary policy objective of regulators was to promote universal service to all consumers through affordable local telephone rates for residential customers. To accomplish this objective, however, regulators created a patchwork of what has become known as implicit subsidies. Thus, for example, regulators permitted higher rates to business customers so that residential rates could be lower, and they frequently required similar rates to urban and rural customers, even though the cost of serving rural customers was higher.[400] Similarly, AT&T was permitted to charge artificially high long-distance toll rates, and its interstate toll revenues were placed into an interstate "settlements" pool.[401] AT&T then shared a portion of these interstate revenues with independent telephone companies and AT&T's affiliated Bell Operating Companies (BOCs).[402] These high long-distance rates enabled regulators to set lower local rates for the BOCs and independent local telephone companies.

163. The use of microwave technology by Microwave Communications, Inc. (MCI), to offer a competitive alternative to AT&T's switched long-distance service beginning in the 1970s cast into doubt the assumption that long-distance telecommunications was a natural monopoly.[403] MCI focused initially on private line service, where AT&T's rates were above cost. MCI's service offerings grew after a series of Commission and court decisions rejected AT&T's objections to MCI's entry.[404] Despite these

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by another carrier and continued to encourage monopoly swapping and consolidation in the name of "efficient service") (citing Warren G. Lavey, *The Public Policies That Changed the Telephone Industry Into Regulated Monopolies: Lessons From Around 1915*, 39 FED. COMM. L.J. 171, 184–85 (1987)); FEDERAL TELECOMMUNICATIONS LAW at 17.

[398] A natural monopoly arises "when a single firm can efficiently serve the entire market because average costs are lower with one firm than with two firms." R. PRESTON MCAFEE, INTRODUCTION TO ECONOMIC ANALYSIS 6–241 (2006), *available at* http://www.mcafee.cc/Introecon/IEA.pdf; *see also* DANIEL F. SPULBER, REGULATION AND MARKETS 3–4 (1989) ("Natural monopoly generally refers to a property of productive technology, often in conjunction with market demand, such that a single firm is able to serve the market at less cost than two or more firms. Natural monopoly is due to economies of scale or economies of multiple-output production.").

[399] For discussions of rate of return regulation, see, *e.g.*, JAMES C. BONBRIGHT ET AL., PRINCIPLES OF PUBLIC UTILITY RATES 197–376 (1988); CHARLES F. PHILLIPS, JR., THE ECONOMICS OF REGULATION: THEORY AND PRACTICE IN THE TRANSPORTATION AND PUBLIC UTILITY INDUSTRIES 260–302 (1969) (PHILLIPS, THE ECONOMICS OF REGULATION); 1 ALFRED E. KAHN, THE ECONOMICS OF REGULATION: PRINCIPLES AND INSTITUTIONS 20–58 (1970) (THE ECONOMICS OF REGULATION).

[400] *See, e.g.*, JONATHAN E. NUECHTERLEIN & PHILIP J. WEISER, DIGITAL CROSSROADS: AMERICAN TELECOMMUNICATIONS POLICY IN THE INTERNET AGE 10–15 (2007) (DIGITAL CROSSROADS).

[401] *See Economic Implications and Interrelationships Arising from Policies and Practices Relating to Customer Information, Jurisdictional Separations and Rate Structures*, Docket No. 20003, First Report, 61 FCC 2d 766, 796–97, paras. 81–82 (1976).

[402] Under the settlements process, the local exchange companies were allowed to recover the portion of their costs allocated to the interstate jurisdiction from the interstate toll revenues. The process for affiliated companies was a process of intracorporate accounting known as "division of revenues," while the process for unaffiliated companies represented real payments from AT&T to the independent companies. *See* THE SECOND INFORMATION REVOLUTION at 188. According to Brock, the revenue sharing settlements process was a major source of support for small rural companies, which often could recover a large share of their costs from the interstate toll revenue pool (in some cases as much as 85 % of their non-traffic sensitive costs). *See id.*

[403] *See* DIGITAL CROSSROADS at 60–64.

[404] AT&T argued that MCI would cherry pick the most profitable customers (those paying above-cost rates) and force AT&T to increase local rates thereby undermining the goal of universal service. AT&T opposed the entry of

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victories, MCI was not entitled to equal access to local exchange service,[405] and MCI and other IXCs were dependent on the BOCs and independent local telephone companies to complete long-distance calls to the end users.[406]

164. For a number of reasons, including AT&T's resistance to the introduction of competition in the long-distance market, the Department of Justice in 1974 filed an antitrust suit alleging that AT&T had engaged in unlawful monopolization in the local, long-distance, and equipment manufacturing markets.[407] After eight years of litigation, AT&T and the Department of Justice entered into a consent decree, which federal District Court Judge Greene approved in 1982.[408] Under the Modification of Final Judgment (MFJ), AT&T agreed to divest its affiliated BOCs from AT&T long distance, and the BOCs were required to provide equal access and dialing parity.[409] In addition, the MFJ barred the BOCs from entering the long-distance, information services, equipment manufacturing, or other competitive markets to prevent predatory cross subsidization by their regulated monopoly local telephone service.[410] Although the MFJ applied only to the BOCs, the Commission subsequently extended interconnection and nondiscriminatory equal access obligations to all incumbent LECs.[411] As a result of the MFJ, MCI, and other competitors were able to compete directly with AT&T to provide long-distance or interstate service, and all IXCs paid interstate access charges to the BOCs and other incumbent LECs to originate and

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MCI before the Commission and the courts. *See* FEDERAL TELECOMMUNICATIONS LAW at 602–14; *Bell System Tariff Offerings of Local Distribution Facilities for Use by Other Common Carriers*, Docket No. 19896, Decision, 46 FCC 2d 413 (1974), *aff'd Bell Tel. Co. of Pa. v. FCC*, 503 F.2d 1250 (3d Cir. 1974); *see also* DIGITAL CROSSROADS at 60–64 (noting that AT&T fought "tooth and nail" to deprive MCI of effective access and even unplugged certain MCI lines from AT&T's network).

[405] Equal access requires that all long-distance carriers be accessible by dialing a 1 and not a string of long-distance codes before dialing the called party's telephone number. *See, e.g.*, HARRY NEWTON, NEWTON'S TELECOM DICTIONARY 326 (16th ed. 2000).

[406] During much of the 1970s, AT&T and MCI debated before the Commission and courts about the charges that MCI should pay the BOCs for originating and terminating interstate calls placed by or to end users on the BOCs' local networks. In December 1978, under the Commission's supervision, AT&T, MCI, and other IXCs entered into a comprehensive interim agreement, known as Exchange Network Facilities for Interstate Access (ENFIA), which set the rates that AT&T's affiliated BOCs would charge IXCs for originating and terminating access to local exchange networks. *See Exchange Network Facilities for Interstate Access (ENFIA)*, CC Docket No. 78-371, Memorandum Opinion and Order, 71 FCC 2d 440 (1979) (subsequent history omitted).

[407] *See United States v. AT&T*, 524 F. Supp. 1336, 1346 (D.D.C. 1981).

[408] *See United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). The 1982 consent decree, as entered by the court, was called the Modification of Final Judgment because it modified a 1956 Final Judgment against AT&T stemming from a 1949 antitrust lawsuit. *See* THE TELECOMMUNICATIONS INDUSTRY at 116–20.

[409] The Act defines "dialing parity" to mean that a "person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)." 47 U.S.C. § 153(15).

[410] *See United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982).

[411] *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983) (*1983 Access Charge Order*), *modified on recon.*, 97 FCC 2d 682 (1983), *modified on further recon.*, 97 FCC 2d 834 (1983), *aff'd in part and remanded in part, Nat'l Ass'n of Regulatory Util. Commissioners v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984).

terminate service to end users.

165. While the AT&T antitrust suit was pending, the Commission began to take the first steps toward reforming intercarrier compensation. In 1978, the Commission commenced a review of intercarrier compensation for originating and terminating access.[412] In 1983, following the MFJ, the Commission eliminated the "existing potpourri of [compensation] mechanisms,"[413] and replaced it "with a single uniform mechanism . . . through which local carriers [could] recover the cost of providing access services needed to complete interstate and foreign telecommunications."[414] The access charge rules adopted by the Commission provided for the recovery of incumbent LECs' costs assigned to the interstate jurisdiction and detailed "the precise manner in which [incumbent LECs] may assess charges on IXCs and end users."[415] In designing the interstate access charge rules, the Commission sought to balance a number of competing objectives.[416] For one, the Commission recognized that "[a]rtificial pricing structures, while perhaps appropriate for use in achieving social objectives under the right conditions, cannot withstand the pressures of a competitive marketplace."[417] Consequently, the Commission sought to follow more closely the principle that costs should be recovered in the way they are incurred, consistent with principles of cost-causation.[418] Under this rate structure principle, the cost of facilities that do not vary based on the amount of traffic carried over those facilities (i.e., non-traffic-sensitive costs) should be recovered through fixed, flat-rated charges, while only costs that vary with usage of facilities (i.e., traffic-sensitive costs) should be recovered through corresponding per-minute rates.[419]

166. Despite these rate structure principles, the Commission concluded that a sudden introduction of large flat-rated charges on end-users could have "adverse effects" on subscribership. It therefore adopted a "plan [that] provides for the gradual introduction of these end-user charges."[420] Thus,

[412] *See MTS and WATS Market Structure*, CC Docket No. 78-72, Notice of Inquiry and Proposed Rulemaking, 67 FCC 2d 757 (1978); Supplemental Notice of Inquiry and Proposed Rulemaking, 73 FCC 2d 222 (1979); Second Supplemental Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 224 (1980); Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177 (1980); and Fourth Supplemental Notice of Inquiry and Proposed Rulemaking, 90 FCC 2d 135 (1982).

[413] *See MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 683, para. 2 (1983) (*First Reconsideration of 1983 Access Charge Order*).

[414] *See First Reconsideration of 1983 Access Charge Order*, 97 FCC 2d 682.

[415] *See Access Charge Reform Order*, 12 FCC Rcd at 15991–92, para. 22.

[416] *See, e.g., First Reconsideration of 1983 Access Charge Order*, 97 FCC 2d at 683, para. 3 (identifying the four primary objectives of: (1) elimination of unreasonable discrimination and undue preferences among rates for interstate services; (2) efficient use of the local network; (3) prevention of uneconomic bypass; and (4) preservation of universal service).

[417] *See First Reconsideration of 1983 Access Charge Order*, 97 FCC 2d. at 686, para. 7.

[418] *See First Reconsideration of 1983 Access Charge Order*, 97 FCC 2d. at 688–89, para. 10; *see also Access Charge Reform Order*, 12 FCC Rcd at 15992, para. 24 ("The Commission has recognized in prior rulemaking proceedings that, to the extent possible, costs of interstate access should be recovered in the same way that they are incurred, consistent with principles of cost-causation.").

[419] *Access Charge Reform Order*, 12 FCC Rcd at 15992, para. 23.

[420] *1983 Access Charge Order*, 93 FCC 2d at 253, para. 35; *see also id.* at 243, para. 4 (finding that a "transitional plan is necessary" in part because "[i]mmediate recovery of high fixed costs through flat end user charges might cause a significant number of local exchange service subscribers to cancel local exchange service despite the existence of a Universal Service Fund" and "[s]uch a result would not be consistent with the goals of the Communications Act."). As a result, the Commission initially limited the flat rate charge imposed on end users, also

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the Commission limited the amount of the interstate loop costs assessed to residential and business customers as a flat-rated monthly charge, and it recovered the remaining interstate loop costs through a per-minute charge imposed on IXCs.[421] Moreover, the Commission continued to apply traditional rate-of-return regulation based on carriers' embedded, fully distributed costs, including common costs and overhead.[422]

167. In 1991, the Commission took another step toward intercarrier compensation reform by replacing rate-of-return regulation with an incentive-based system of regulation for the BOCs and GTE.[423] This new regulatory regime, known as price cap regulation, was designed to replicate some of the efficiency incentives found in competitive markets. In particular, price caps were designed to encourage companies to: (1) improve their efficiency by creating incentives to reduce costs; (2) invest efficiently in new plant and facilities; and (3) develop and deploy innovative service offerings.[424] Although many smaller and rural incumbent LECs remain subject to the Part 69 rate-of-return rules, most of the larger incumbent LECs are now subject to price cap regulation.[425]

168. The Commission's reforms during the 1980s and early 1990s yielded many public interest benefits. For example, economists have estimated that above-cost access charges reduced U.S.

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known as the subscriber line charge or SLC, to $1.00 (subsequent orders raised the cap on the subscriber line charge for residential users to $6.50).

[421] This per-minute charge was called the carrier common line charge. *See Access Charge Reform Order*, 12 FCC Rcd at 15992, para. 24. Additional charges were imposed on IXCs to recover the interstate portion of the costs of other parts of a local exchange carrier's network, such as local switches and transport. *See First Reconsideration of 1983 Access Charge Order*, 97 FCC 2d at 735–40, paras. 129–34, 137–43.

[422] *See* 47 C.F.R. §§ 69.301–.502; *see also Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6787, para. 1 (1990) (*LEC Price Cap Order*). The rate-of-return regulations are set forth in Part 69 of our rules. *See generally* 47 C.F.R. §§ 69.1–701.

[423] Price cap regulation was mandatory for the BOCs and GTE and optional for other incumbent local exchange carriers. *See LEC Price Cap Order*, 5 FCC Rcd at 6818–20, paras. 257–79; *see also Access Charge Reform; Price Cap Performance Review for Local Exchanges Carriers; Interexchange Carrier Purchases of Switch Access Services Offered by Competitive Local Exchange Carriers; Petition of U.S. West Commc'ns, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, CC Docket Nos. 96-262, 94-1, 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14224 n.1 (1999) (*Pricing Flexibility Order*).

[424] *LEC Price Cap Order*, 5 FCC Rcd at 6789–91, paras. 21–37; *Special Access Rates for Price Cap Carriers*, WC Docket No. 05-25, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 1998–99, para. 11 (2005); *Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates*, WC Docket No. 03-228, CC Docket Nos. 96-149, 98-141, 96-149, 01-337, Report and Order, Memorandum Opinion and Order, 19 FCC Rcd 5102, 5115, para. 22 (2004); *Access Charge Reform; Price Cap Performance Review for LECs; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Order on Remand, 18 FCC Rcd 14976, 14979, para. 4 (2003); *Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps; Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Order, 17 FCC Rcd 10868, 10873, para. 9 (2002). *See also Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294 (2008); *Petition of Puerto Rico Telephone Company, Inc, for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, WC Docket Nos. 07-291, 07-292, 08-18, Order, 23 FCC Rcd 7353 (2008).

[425] *See generally* 47 C.F.R. §§ 61.1–.193, 69.1–.701.

economic welfare by an estimated $10–17 billion annually during the late 1980s, but that the annual welfare loss declined substantially to between $2.5 billion and $7 billion following the Commission's access charge reforms in the 1980s and early 1990s.[426] Despite these reforms, however, per-minute access rates remained high.[427] These high switched access rates created an opportunity for competitive access providers (CAPs) to begin offering facilities-based competition. CAPs could offer carriers a competitive alternative to the BOCs, often with lower rates and higher quality.[428] The entry of CAPs and the potential entry of cable companies into local residential telephone markets created pressure toward opening the local telephone markets to competition, which ultimately resulted in the passage of the 1996 Act.

2. Intercarrier Compensation Regulation Since the 1996 Act

169. Recognizing these fundamental market changes, Congress's goals in passing the 1996 Act were to: (1) open local exchange and exchange access markets to competition; (2) promote increased competition in telecommunications markets that were already open to competition; and (3) reform the existing universal service system to be consistent with competitive markets.[429] With respect to the last goal, Congress recognized that implicit subsidies, which were implemented when the industry was considered a natural monopoly, were neither consistent with, nor sustainable in, a competitive market, and that they should be replaced with explicit support where necessary.[430] It also recognized, however, that conversion of the existing web of implicit subsidies to a system of explicit support would be a difficult task that could not be accomplished immediately.[431] Accordingly, when Congress established the statutory scheme to open local markets to competition,[432] it included a transitional mechanism in section 251(g) providing for the continued enforcement of certain pre-Act obligations.[433] Notably, section 251(g)

[426] *See* Letter from Jerry Ellig, Senior Research Fellow, Mercatus Center, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 08-183, 07-135, 05-337, 99-68 at 2 (filed Sept. 22, 2008) (Mercatus Center Sept. 22, 2008 *Ex Parte* Letter) (citing ROBERT W. CRANDALL, AFTER THE BREAKUP: U.S. TELECOMMUNICATIONS IN A MORE COMPETITIVE ERA 141 (1991) and ROBERT W. CRANDALL & LEONARD WAVERMAN, WHO PAYS FOR UNIVERSAL SERVICE? 120 (2000)).

[427] Among the reasons that switched access rates remained high were that they were based on fully distributed costs and included a large allocation of common and overhead network costs. *See supra* note 422.

[428] *See, e.g., Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5158, para. 8 (1994) (recognizing that local competition should lead to more efficient operations, the deployment of "new technologies facilitating innovative service offerings, increase the choices available to access customers, and reduce the prices of services subject to competition").

[429] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 15505, para. 3 (1996) (subsequent history omitted) (*Local Competition First Report and Order*).

[430] Specifically, Congress directed that universal service support "should be explicit and sufficient to achieve the purposes" of section 254. 47 U.S.C. § 254(e); *see also* S. REP. NO. 104-230, at 131 (1996) (Conf. Rep) (stating that, "[t]o the extent possible, . . . any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today").

[431] *Access Charge Reform Order*, 12 FCC Rcd at 15987, para. 9.

[432] *See* 47 U.S.C. §§ 251–52; *Local Competition First Report and Order*, 11 FCC Rcd at 15505, para. 3.

[433] *See* 47 U.S.C. § 251(g); *WorldCom, Inc. v. FCC*, 288 F.3d 429, 432 (D.C. Cir. 2002) (*WorldCom*) (subsequent history omitted) (holding that section 251(g) appears to provide for the continued enforcement "of certain pre-Act regulatory 'interconnection restrictions and obligations'"); *see also Competitive Telecomms. Ass'n v. FCC*, 117 F.3d (continued....)

provides for the continued enforcement of exchange access and interconnection obligations only "until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after the date of such enactment," suggesting that such obligations would be re-evaluated based on the requirements imposed by the 1996 Act.[434]

170. Congress also recognized the need to impose new obligations on carriers to open local telephone markets to competition, and directed the Commission to adopt implementing rules. Specifically, section 251(b) imposed certain obligations on all LECs, while section 251(c) imposed additional obligations on incumbent LECs, including the obligation to provide access to network elements on an unbundled basis.[435] Of relevance here, section 251(b)(5) of the 1996 Act imposed on all LECs a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[436]

171. In requiring LECs to enter into reciprocal compensation agreements with requesting carriers, Congress introduced another mechanism through which carriers compensate each other for the exchange of traffic besides the access charge regime preserved under section 251(g). Although Congress expressed a preference for negotiated interconnection agreements to implement the requirements of section 251, section 252 provided procedures for the resolution of interconnection disputes involving incumbent LECs, including standards governing arbitration of such disputes by state regulatory commissions.[437] For such state arbitrations, section 252(d) also established general pricing guidelines for incumbent LECs, including guidelines for setting the price of unbundled network elements (UNEs)[438] and reciprocal compensation rates.[439]

172. In the *Local Competition First Report and Order*, the Commission adopted pricing rules for states to use in setting the price of interconnection and UNEs when arbitrating interconnection disputes.[440] In particular, the Commission directed the states to employ a forward-looking, long-run average incremental cost methodology, which it called "Total Element Long-Run Incremental Cost" or "TELRIC."[441] The Commission found that TELRIC prices should include a reasonable allocation of forward-looking common costs, including overheads.[442] Although the Commission recognized that peak-

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1068, 1072 (8th Cir. 1997) (finding that section 251(g) preserves certain rate regimes already in place and "leaves the door open for the promulgation of new rates at some future date").

[434] 47 U.S.C. § 251(g).

[435] *See* 47 U.S.C. §§ 251(b)–(c). Certain rural carriers were exempt from section 251(c) until such time as a requesting carrier met the statutory test for removing the so-called "rural exemption." *See* 47 U.S.C. § 251(f)(1).

[436] 47 U.S.C. § 251(b)(5).

[437] 47 U.S.C. § 252.

[438] 47 U.S.C. § 252(d)(1).

[439] See 47 U.S.C. § 252(d)(2).

[440] *See Local Competition First Report and Order*, 11 FCC Rcd at 15812–929, paras. 618–862 (implementing the pricing principles contained in sections 251(c)(2) and (c)(3) and section 252(d)(1) of the 1996 Act); *see also* 47 U.S.C. §§ 251(c)(2)–(3), 252(d)(1). Among other things, the 1996 Act required incumbent LECs to make portions of their networks (the physical facilities and features, functions, and capabilities associated with those facilities) available to requesting competitive carriers on an unbundled basis. *See Local Competition First Report and Order*, 11 FCC Rcd at 15624, 15631, paras. 241, 258.

[441] *See Local Competition First Report and Order*, 11 FCC Rcd at 15844–56, paras. 672–703.

[442] *See Local Competition First Report and Order*, 11 FCC Rcd at 15851–54, paras. 694–98; 47 C.F.R. §§ 51.503, 51.505. The term "common costs" refers to "costs that are incurred in connection with the production of multiple

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load pricing was the most efficient way to recover the cost of traffic-sensitive facilities, it did not require states to adopt peak-load pricing because of the administrative difficulties associated with such an approach.[443] In interpreting the statutory pricing rules for reciprocal compensation contained in section 252(d)(2)(A) of the 1996 Act,[444] the Commission found that costs for transport and termination should "be recovered in a cost-causative manner and that usage based charges should be limited to situations where costs are usage sensitive."[445] In particular, the Commission found that the "additional costs" to the LEC of terminating a call that originates on another carrier's network "primarily consists of the traffic-sensitive component of local switching" and that non traffic-sensitive costs, such as the costs of local loops and line ports, should not be considered "additional costs."[446] The Commission further found that the "additional costs" standard of section 252(d)(2) permits the use of the same TELRIC standard that it

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products or services, and remains unchanged as the relative proportion of those products or services varies." *Local Competition First Report and Order*, 11 FCC Rcd at 15845, para. 676. In its rules, the Commission defines forward-looking common costs as "economic costs efficiently incurred in providing a group of elements or services . . . that cannot be attributed directly to individual elements or services." 47 C.F.R. § 51.505(c)(1). The term "overhead costs" refers to common costs incurred by the firm's operations as a whole, such as the salaries of executives. *Local Competition First Report and Order*, 11 FCC Rcd at 15851, para. 694.

[443] The Commission recognized that, "[b]ecause the cost of capacity is determined by the volume of traffic that the facilities are able to handle during peak load periods, we believe, as a matter of economic theory, that if usage-sensitive rates are used, then somewhat higher rates should apply to peak period traffic, with lower rates for non-peak usage." *Local Competition First Report and Order*, 11 FCC Rcd at 15878, para. 755. The Commission recognized that higher costs are incurred to carry additional traffic at peak volumes, because additional capacity is required to carry that traffic. *Id.* at 15878, para. 755. In contrast, "off-peak traffic imposes relatively little additional cost because it does not require any incremental capacity to be added to base plant." *Id.* at 15878, para. 755. The Commission found that there would be administrative difficulties with establishing peak-load prices, however, and did not require or forbid states from adopting that approach. *Id.* at 15878–79, paras. 756–57.

[444] *See generally Local Competition First Report and Order*, 11 FCC Rcd at 16008–58, paras. 1027–118 (implementing the reciprocal compensation obligations contained in section 251(b)(5) of the 1996 Act). The reciprocal compensation rules currently require the calling party's LEC to compensate the called party's LEC for the additional costs associated with transporting a call subject to section 251(b)(5) from the carriers' interconnection point to the called party's end office, and for the additional costs of terminating the call to the called party. Section 51.701(c) of the Commission's rules defines transport as "the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC." 47 C.F.R. § 51.701(c). Section 51.701(d) of the Commission's rules defines termination as "the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." 47 C.F.R. § 51.701(d). In the *Local Competition First Report and Order*, the Commission also concluded that "the new transport and termination rules should be applied to LECs and CMRS providers." 11 FCC Rcd at 16016–17, para. 1043.

[445] *Local Competition First Report and Order*, 11 FCC Rcd at 16028, para. 1063. This determination led to per-minute pricing for transport and termination, except in the case of dedicated facilities, which may be flat-rated. *Id.* at 16028, para. 1063. Specifically, the Commission required that all interconnecting parties be offered the option of purchasing dedicated facilities on a flat-rated basis. *Id.* at 16028, para. 1063.

[446] *Local Competition First Report and Order*, 11 FCC Rcd at 16024–25, para. 1057. Although the Commission concluded that "non-traffic sensitive costs should not be considered 'additional costs,'" the only non-traffic sensitive costs specifically identified and required to be removed were the costs of local loops and line ports. *Id.* at 16025, para. 1057.

established for interconnection and unbundled elements.[447] The pricing rules governing reciprocal compensation that the Commission adopted in the *Local Competition First Report and Order* remain in effect today.[448]

173. Following passage of the 1996 Act, the Commission also began reforming both interstate access charges and federal universal service support mechanisms by moving the implicit subsidies contained in interstate access charges into explicit universal service support, consistent with the 1996 Act's directives. In particular, in the 1997 *Access Charge Reform Order*, the Commission modified the price cap rules for larger incumbent LECs by aligning the price cap LECs' rate structure more closely with the manner in which costs are incurred.[449] Recognizing Congress's direction that universal service support should be "explicit," the Commission adopted rules to "reduce usage-sensitive interstate access charges by phasing out local loop and other non-traffic sensitive costs from those charges and directing incumbent LECs to recover those NTS [non-traffic sensitive] costs through more economically efficient, flat-rated charges."[450]

174. The Commission acknowledged, however, that the measures it adopted in the *Access Charge Reform Order* would not "remove all implicit support from all access charges immediately."[451] Rejecting suggestions that all implicit subsidies be eliminated from access charges immediately, the Commission noted that it did not have the tools to identify the existing subsidies precisely, and it expressed concern that eliminating all implicit subsidies at once might have an "inequitable impact on the incumbent LECs."[452] Moreover, while stating its desire to rely on competition to drive access charges toward cost,[453] the Commission recognized that "some services may prove resistant to competition," and

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[447] *Local Competition First Report and Order*, 11 FCC Rcd at 16023–25, paras. 1054–58. As with its pricing rules for UNEs, the Commission determined that termination rates established pursuant to the TELRIC methodology should include a reasonable allocation of forward-looking common costs. *Id.* at 16025, para. 1058. Similarly, the Commission again noted that the costs of transporting and terminating traffic during peak and off-peak hours may not be the same. *Id.* at 16028–29, para. 1064. In light of administrability concerns, the Commission once again neither required nor forbid states from adopting rates that reflected peak and off-peak costs, but expressed hope that some states or negotiating parties would consider peak-load pricing. *Id.* at 16028–29, para. 1064.

[448] A number of parties appealed the Commission's *Local Competition First Report and Order*, including the rules it adopted governing the setting of rates for unbundled network elements and reciprocal compensation. In *AT&T v. Iowa Utilities Board*, the Supreme Court upheld the Commission's jurisdiction to "design a pricing methodology" to govern state rate setting under section 252 of the Act. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 397 (1999) (*AT&T v. Iowa Utils. Bd.*). Subsequently, in *Verizon Commc'ns, Inc. v. FCC*, the Supreme Court affirmed the Commission's choice of TELRIC as a permissible methodology for states to use in ratemaking proceedings. *Verizon Commc'ns, Inc. v. FCC*, 535 U.S. 467, 497–529 (2002) (*Verizon v. FCC*). The court held that the Commission's decision to adopt a forward-looking cost methodology was a reasonable interpretation of the statute and that the Commission did not err in rejecting alternative methodologies advocated by the incumbent LECs. *Verizon v. FCC*, 535 U.S. at 507–08. The Court also rejected arguments that various aspects of the TELRIC methodology were unlawful. *Verizon v. FCC*, 535 U.S. at 523.

[449] *See Access Charge Reform Order*, 12 FCC Rcd at 16004–07, paras. 54–66 (summarizing the rate structure changes).

[450] *Access Charge Reform Order*, 12 FCC Rcd at 15986, para. 6.

[451] *Access Charge Reform Order*, 12 FCC Rcd at 15987, para. 9.

[452] *Access Charge Reform Order*, 12 FCC Rcd at 15987, para. 9; *see also id.* at 16002–03, paras. 45–47.

[453] Explaining its reliance on a "market-based" approach to access reform, it stated its belief that emerging competition in the local exchange markets would provide a more accurate means of identifying implicit subsidies

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it reserved the right to "adjust rates in the future to bring them into line with forward-looking costs."[454]

175. To limit possible rate shock to retail customers, the Commission also limited the amount of allocated interstate cost of a local loop that could be assessed directly on residential and business customers as a flat-rated monthly charge.[455] Although the *Access Charge Reform Order* started the process toward establishing explicit subsidies, the Commission concluded that "a process that eliminates implicit subsidies from access charges over time [was] warranted."[456]

176. In the 2000 *CALLS Order*,[457] the Commission continued its effort to remove implicit subsidies and replace them with explicit universal service support for price cap LECs by, among other things, reducing per-minute intercarrier charges, raising the SLC cap, phasing out the Presubscribed Interexchange Carrier Charge (PICC),[458] and permitting price-cap LECs to deaverage the SLC once the affected carrier charges were eliminated.[459] The Commission also created a new universal service fund to compensate price-cap incumbent LECs, in part, for lost interstate access revenues.[460]

177. In the *MAG Order*, the Commission extended similar reforms to incumbent LECs subject

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and moving access rates to economically sustainable levels. *Access Charge Reform Order*, 12 FCC Rcd at 16001–02, para. 44.

[454] *Access Charge Reform Order*, 12 FCC Rcd at 16003, para. 48. The Commission also applied its market-based approach to the terminating access rates charged by competitive LECs and declined to adopt any regulations governing competitive LEC access charges. *Id.* at 16141, para. 363. It reasoned that "the possibility of competitive responses by IXCs will have a constraining effect on non-incumbent LEC pricing." *Id.* at 16141, para. 362. This reliance on a market-based approach proved misplaced. In subsequent years, competitive LECs, instead of reducing access charges, frequently raised them above the regulated rates of incumbent LECs. As a result, the Commission was forced to regulate competitive LEC access charges. *See* 47 C.F.R. § 61.26; *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order, 16 FCC Rcd 9923, 9924, paras. 1–3 (2001) (*CLEC Access Charge Order*) (establishing benchmark rates for competitive LEC access charges), *recon.*, *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Petition of Z-Tel Commc'ns Inc. For Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108 (2004) (*CLEC Access Charge Recon. Order*).

[455] *See, e.g.*, *Access Charge Reform Order*, 12 FCC Rcd at 16010–11, para 73. To reduce per-minute carrier common line (CCL) charges, the Commission created the presubscribed interexchange carrier charge (PICC), a flat-rated, monthly charge imposed on IXCs on a per-line basis. *Id.* at 15998–16000, paras. 37–40. The Commission also shifted the cost of line ports from per-minute local switching charges to the common line category and established a mechanism to phase out the per-minute Transport Interconnection Charge (TIC). *Id.* at 16035–40, 16073–86, paras. 125–34, 210–43.

[456] *Access Charge Reform Order*, 12 FCC Rcd at 15987, para. 9.

[457] *See CALLS Order*, 15 FCC Rcd 12962.

[458] *See supra* note 455 (discussing the PICC).

[459] *See generally CALLS Order*, 15 FCC Rcd at 13025–28, paras. 151–59 (reducing interstate switched access rates); *id.* at 12991–13007, paras. 76–112 (raising SLC caps and eliminating PICCs); *id.* at 13007–14, paras. 113–28 (deaveraging SLCs).

[460] *See CALLS Order*, 15 FCC Rcd at 13046–49, paras. 201–05 (establishing a "$650 million interstate access universal service support mechanism").

to rate-of-return regulation.[461] As with the *CALLS Order*, these reforms were designed to rationalize the interstate access rate structure by aligning it more closely with the manner in which costs are incurred.[462] Among other things, the *MAG Order* increased the SLC caps for rate-of-return carriers and phased out the per-minute CCL charge from the common line rate structure.[463] The Commission also created a universal service support mechanism to replace implicit support with explicit support, in order to foster competition and more efficient pricing.[464] Many, but not all, states have also addressed intercarrier compensation regulation. In addition to setting rates for reciprocal compensation, many states have revised their rules governing intrastate access charges. Although some states have chosen to mirror interstate access charges,[465] others continue to maintain intrastate access charges that far exceed interstate charges.[466]

3. Problems Associated With the Existing Intercarrier Compensation Regimes

[461] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613 (2001) (*MAG Order*), *recon. in part*, *Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, First Order on Reconsideration, *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Twenty-Fourth Order on Reconsideration, 17 FCC Rcd 5635 (2002), *amended on recon.*, *Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Third Order on Reconsideration, 18 FCC Rcd 10284 (2003); *see also Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service*, CC Docket Nos. 00-256, 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004).

[462] *MAG Order*, 16 FCC Rcd at 19617, para. 3.

[463] *MAG Order*, 16 FCC Rcd at 19621, para. 15.

[464] *MAG Order*, 16 FCC Rcd at 19617, para. 3. A new universal service support mechanism, Interstate Common Line Support (ICLS), was implemented to replace the CCL charge beginning July 1, 2002. *Id.* at 19621, para. 15. This mechanism recovers any shortfall between the allowed common line revenue requirement of rate-of-return carriers and their SLC and other end-user revenues, thereby ensuring that changes in the rate structure did not affect the overall recovery of interstate access costs by rate-of-return carriers serving high-cost areas. *Id.* at 19642, 19667–73, paras. 61, 128–41. To reform the local switching and transport rate structure of rate-of-return carriers, the Commission shifted the non-traffic sensitive costs of local switch line ports to the common line category, and reallocated the remaining costs contained in the TIC to other access rate elements, thus reducing per-minute switched access charges. *Id.* at 19649–61, paras. 76–111.

[465] *See, e.g.*, *BA-WV's Intrastate Access Charges*, Case No. 00-0318-T-GI, Commission Order, 2001 WL 935643 (West Virginia PSC June 1, 2001) (ordering that "the traffic-sensitive intrastate access charges of Verizon-WV shall be modified to mirror the interstate rate structure and rate elements"); *Tariff Filing of BellSouth Telecommunications, Inc to Mirror Interstate Rates*, Case No. 98-065, Order (Kentucky PSC Mar. 31, 1999) (requiring BellSouth "to eliminate the state-specific Non-Traffic Sensitive Revenue Requirement . . . , thus moving its aggregate intrastate switched access rate to the FCC's 'CALLS' interstate rate"); *Establishment of Carrier-to-Carrier Rules*, Case No. 06-1344-TP-ORD, Order, 2007 WL 3023991 (Ohio PUC Oct. 17, 2007) ("[T]his Commission requires ILECs to mirror their interstate switched access rate on the intrastate side . . . .").

[466] *See, e.g.*, Letter from David C. Bartlett, Vice President of Federal Government Affairs, Embarq, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Exh. C (filed Aug. 1, 2008) (noting intrastate terminating switched access rates five to ten times higher than interstate rates in Missouri, Washington, Virginia, and several other States).

178. The introduction of competition into local telephone markets revealed weaknesses in the existing intercarrier compensation regimes that remained notwithstanding the efforts of the Commission and certain states to reform interstate and intrastate access charges. As the Commission observed in 2001, "[i]nterconnection arrangements between carriers are currently governed by a complex system of intercarrier compensation regulations . . . [that] treat different types of carriers and different types of services disparately, even though there may be no significant differences in the costs among carriers or services."[467] We have seen numerous examples of regulatory arbitrage in the marketplace both because of the different rates for similar functions under different intercarrier compensation regimes and because none of these regimes currently set rate levels in an economically efficient manner.[468]

179. One example of regulatory arbitrage involves traffic to dial-up ISPs. Following adoption of the *Local Competition First Report and Order*, state commissions set reciprocal compensation rates for the exchange of local traffic. These reciprocal compensation rates were sufficiently high that many competitive LECs found it profitable to target and serve ISP customers who were large recipients of local traffic, since dial-up Internet customers would call their ISP and then stay on the line for hours. This practice led to significant traffic imbalances, with competitive LECs seeking billions of dollars in reciprocal compensation payments from other LECs.[469] The Commission responded by adopting a separate interim intercarrier compensation regime for this traffic.

180. On February 26, 1999, the Commission issued a Declaratory Ruling and Notice of Proposed Rulemaking in which it held that ISP-bound traffic is jurisdictionally interstate because end users access websites across state lines. Because the *Local Competition First Report and Order* concluded that the reciprocal compensation obligation in section 251(b)(5) applied to only local traffic, the Commission found in the *Declaratory Ruling* that ISP-bound traffic is not subject to section 251(b)(5).[470] On March 24, 2000, in the *Bell Atlantic* decision, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated certain provisions of the *Declaratory Ruling*.[471] The court did not question the Commission's finding that ISP-bound traffic is interstate. Rather, the court held that the Commission had not adequately explained how its end-to-end jurisdictional analysis was relevant to determining whether a call to an ISP is subject to reciprocal compensation under section 251(b)(5).[472] In particular, the court noted that a LEC serving an ISP appears to perform the function of "termination" because the LEC delivers traffic from the calling party through its end office switch to the called party, the ISP.[473]

[467] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation NPRM*).

[468] The phrase "regulatory arbitrage" refers to profit-seeking behavior that can arise when a regulated firm is required to set difference prices for products or services with a similar cost structure. *See, e.g.*, PATRICK DEGRABA, BILL AND KEEP AT THE CENTRAL OFFICE AS THE EFFICIENT INTERCONNECTION REGIME 1, para. 2 n.3 (Federal Communications Commission, OPP Working Paper No. 33, 2000), *available at* http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp33.pdf.

[469] *See Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9183, para. 70 (2001) (subsequent history omitted) (*ISP Remand Order*).

[470] *See Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 3689, 3703–06, paras. 21–27 (1999) (*Declaratory Ruling*), *vacated and remanded, Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) (*Bell Atlantic*).

[471] *Bell Atlantic*, 206 F.3d at 1.

[472] *See Bell Atlantic*, 206 F.3d at 5.

[473] *Bell Atlantic*, 206 F.3d at 6.

181. On April 27, 2001, the Commission released the *ISP Remand Order*, which concluded that section 251(g) excludes ISP-bound traffic from the scope of section 251(b)(5).[474] The Commission explained that section 251(g) maintains the pre-1996 Act compensation requirements for "exchange access, information access, and exchange services for such access," thereby excluding such traffic from the reciprocal compensation requirements that the 1996 Act imposed. The Commission concluded that ISP-bound traffic is "information access" and, therefore, is subject instead to the Commission's section 201 jurisdiction over interstate communications.[475] The Commission concluded that a bill-and-keep regime might eliminate incentives for arbitrage and force carriers to look to their own customers for cost recovery.[476] To avoid a flash cut to bill-and-keep, however, the Commission adopted an interim compensation regime pending completion of the *Intercarrier Compensation* proceeding.[477]

182. On May 3, 2002, the D.C. Circuit found that the Commission had not provided an adequate legal basis for the rules it adopted in the *ISP Remand Order*.[478] Once again, the court did not question the Commission's finding that ISP-bound traffic is jurisdictionally interstate. Rather, the court held that section 251(g) of the Act did not provide a basis for the Commission's decision. The court held that section 251(g) is simply a transitional device that preserved obligations that predated the 1996 Act until the Commission adopts superseding rules, and there was no pre-1996 Act obligation with respect to intercarrier compensation for ISP-bound traffic.[479] Although the court rejected the legal rationale for the interim compensation rules, the court remanded, but did not vacate, the *ISP Remand Order* to the Commission, and it observed that "there is plainly a non-trivial likelihood that the Commission has authority" to adopt the rules.[480] Accordingly, the interim rules adopted in the *ISP Remand Order* have remained in effect.

[474] *See ISP Remand Order*, 16 FCC Rcd at 9171–72, para. 44.

[475] *See ISP Remand Order*, 16 FCC Rcd at 9175, para. 52. Thus, the Commission affirmed its prior finding in the *Declaratory Ruling* that ISP-bound traffic is jurisdictionally interstate. *See id*; *see also Declaratory Ruling*, 14 FCC Rcd at 3701–03, paras. 18–20.

[476] *ISP Remand Order*, 16 FCC Rcd at 9184–85, paras. 74–75. The Commission discussed at length the market distortions and regulatory arbitrage opportunities created by the application of per-minute reciprocal compensation rates to ISP-bound traffic. In particular, the Commission found that requiring compensation for this type of traffic at existing reciprocal compensation rates undermined the operation of competitive markets because competitive LECs were able to recover a disproportionate share of their costs from other carriers, thereby distorting the price signals sent to their ISP customers. *See id.* at 9181–86, paras. 67–76.

[477] *See ISP Remand Order*, 16 FCC Rcd at 9155–57, paras. 7–8. The interim regime adopted by the Commission consisted of: (1) a gradually declining cap on intercarrier compensation for ISP-bound traffic, beginning at $.0015 per minute-of-use and declining to $.0007 per minute-of-use; (2) a growth cap on total ISP-bound minutes for which a LEC may receive this compensation; (3) a "new markets rule" requiring bill-and-keep for the exchange of this traffic if two carriers were not exchanging traffic pursuant to an interconnection agreement prior to the adoption of the interim regime; and (4) a "mirroring rule" that gave incumbent LECs the benefit of the rate cap only if they offered to exchange all traffic subject to section 251(b)(5) at the same rates. *Id.* at 9187–89, 9193–94, paras. 78, 80, 89. In a subsequent order, the Commission granted forbearance to all telecommunications carriers with respect to the growth caps and the new markets rule. *See Petition of Core Commc'ns Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, Order, 19 FCC Rcd 20179 (2004) (*Core Forbearance Order*). Thus, only the rate caps and mirroring rule remain in effect today.

[478] *See WorldCom*, 288 F.3d at 429.

[479] *See WorldCom*, 288 F.3d at 433.

[480] *See WorldCom*, 288 F.3d at 434.